

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 104

March 15, 1995, 11:08 a.m.
Page S-3922 Temp. Record

UNFUNDED MANDATES CONFERENCE/Passage

SUBJECT: Conference report to accompany the Unfunded Mandate Reform Act of 1995 . . . S. 1. Agreeing to the conference report.

ACTION: CONFERENCE REPORT AGREED TO, 91-9

SYNOPSIS: Pertinent votes on this legislation include Nos. 16-41, 43-45, and 47-61.

The conference report to accompany S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority points of order in the Senate and in the House. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if its committee report does not contain certain information on public and private sector mandates that are contained in the bill or resolution, and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million. The Act will be prospective, applying to bills considered on or after January 1, 1996, or 90 days after the CBO is provided the funds necessary to fulfill its responsibilities under this Act, whichever comes first. It will apply to reauthorizations to the extent they contain new mandates. Details include those listed below.

Each reported bill or joint resolution from an authorizing committee of Congress will be accompanied by a report containing the following information:

- a listing with explanations of any State or local laws that it will preempt;
- an identification and description of any Federal mandates in the bill or joint resolution;
- a qualitative, and if practicable, a quantitative assessment of the costs and benefits anticipated from those mandates; and
- a statement of the degree to which the language on each Federal mandate affects the competitive balance between the public and private sectors, and the steps taken by the committee to avoid any adverse impact on the private sector (see vote No. 19).

For each reported bill or joint resolution from an authorizing committee that contains an intergovernmental mandate, the required report will also contain:

(See other side)

YEAS (91)				NAYS (9)		NOT VOTING (0)	
Republican (54 or 100%)		Democrats (37 or 80%)		Republicans (0 or 0%)	Democrats (9 or 20%)	Republicans (0)	Democrats (0)
Abraham	Hutchison	Akaka	Hollings		Boxer		
Ashcroft	Inhofe	Baucus	Inouye		Bradley		
Bennett	Jeffords	Biden	Johnston		Bumpers		
Bond	Kassebaum	Bingaman	Kennedy		Byrd		
Brown	Kempthorne	Breaux	Kerrey		Lautenberg		
Burns	Kyl	Bryan	Kerry		Leahy		
Campbell	Lott	Conrad	Kohl		Levin		
Chafee	Lugar	Daschle	Mikulski		Lieberman		
Coats	Mack	Dodd	Moseley-Braun		Sarbanes		
Cochran	McCain	Dorgan	Moynihan				
Cohen	McConnell	Exon	Murray				
Coverdell	Murkowski	Feingold	Nunn				
Craig	Nickles	Feinstein	Pell				
D'Amato	Packwood	Ford	Pryor				
DeWine	Pressler	Glenn	Reid				
Dole	Roth	Graham	Robb				
Domenici	Santorum	Harkin	Rockefeller				
Faircloth	Shelby	Heflin	Simon				
Frist	Simpson		Wellstone				
Gorton	Smith						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
Helms	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

- a statement of the amount, if any, of increase or decrease of Federal authorizations to pay for the intergovernmental mandate;
- a statement of whether the committee intends that the intergovernmental mandate be partially or wholly unfunded, and why;
- a statement of how funding will be distributed equitably, if funding is provided or authorized in whole or in part; and
- an identification of existing sources of Federal assistance that may be used to help pay the costs of the mandate.

CBO intergovernmental mandate estimates:

• for each reported bill or joint resolution from an authorizing committee that contains intergovernmental mandates, the CBO will provide an estimate with an explanation of whether the total direct costs of those mandates will exceed \$50 million in any of the first 5 years in which one or more of those mandates are in effect;

• if the CBO finds that the \$50 million threshold is exceeded in any of those 5 years it will provide an estimate of the total direct cost of those mandates for subsequent years; for mandates that will be funded through appropriations, estimates will not extend more than 10 years beyond the date any of those mandates are first in effect;

• if the \$50 million threshold is exceeded, the CBO will identify any amount in the bill that has been authorized to pay for the mandates; and

• if the CBO determines it is not possible to make a reasonable estimate, it will so report and will not provide an estimate (in this instance, no point of order will lie against a mandate for being unfunded, but a point of order will lie for failing to provide an estimate; see vote No. 26).

CBO private sector mandate estimates:

• for each reported bill or joint resolution from an authorizing committee that contains private sector mandates, the CBO will provide an estimate with an explanation of whether the total direct costs of those mandates will exceed \$100 million in any of the first 5 fiscal years in which any of those mandates are in effect;

• if the \$100 million threshold is exceeded, the CBO will estimate the total direct costs of those mandates for subsequent years;

• if the \$100 million threshold is exceeded, the CBO will identify the amount authorized in the legislation, if any, to pay the costs of those mandates; and

• if the CBO determines it cannot make a reasonable estimate of the costs of private sector mandates in a bill, it will so report and will not provide an estimate (in which case no point of order will lie; see below).

CBO estimates on amended bills and conference reports:

• to the extent practicable, the CBO will prepare estimates on mandates that have been added to bills that have passed either house, and on mandates that have been added in conference.

Point of order against reported bills lacking estimates:

• a point of order will lie against any bill or resolution from an authorizing committee for which a CBO estimate on mandates as described above is not published in the committee's report, printed in the CONGRESSIONAL RECORD, or summarized in the CONGRESSIONAL RECORD before floor consideration, except as noted above.

Point of order against unfunded intergovernmental mandates:

• a point of order will lie against any bill, joint resolution, amendment, motion, or conference report that will increase the direct costs of Federal intergovernmental mandates in a bill or resolution over the \$50 million threshold as earlier detailed, unless: entitlement spending is increased to cover fully those costs; direct spending authority and matching new receipts are provided to cover fully those costs; or authorizations sufficient to cover costs for a period of up to 10 years are made (if a bill provides for authorizations for intergovernmental mandates, then the appropriations bill through which funding is expected to be provided will be identified, and a Federal agency will be designated to determine if sufficient funding is appropriated each year to pay fully those mandates' costs; that Federal agency will notify Congress if insufficient funding is provided in any year for a mandate; after notification, that mandate will cease to be effective if a law is not passed within a specified period of time allowing for its continuation (see vote No. 49 for related debate)).

Point of order on appropriations bills:

• points of order will not apply to appropriations bills or their conference reports, but will apply to legislative provisions therein that increase direct costs of intergovernmental mandates; if a point of order is sustained against a legislative provision that provision will be stricken.

Waiver/appeal of points of order in the Senate:

• points of order established by this Act will be waivable/appealable by simple majority votes.

Waiver/appeal of points of order in the House:

• points of order will be debatable for 20 minutes, equally divided;

• it will not be in order to consider a rule or order that waives the above points of order; and

• in the Committee of the Whole, it will be in order to move to strike an unfunded mandate unless a rule has been adopted specifically waiving that motion.

Categories of laws that will be exempt from this Act's requirements:

• Federal civil rights laws (see vote No. 30);

• individual constitutional rights;

MARCH 15, 1995

VOTE NO. 104

- Federal requirements to prevent waste, fraud, and abuse in grant programs;
- emergency assistance or relief requested by State, local, or tribal governments;
- national security/ratification of international treaties;
- bills designated by the President as emergency legislation and so designated in statute by Congress; and
- laws relating to the old-age, survivors, and disability insurance program under title II of the Social Security Act.

Regulatory changes:

- agencies will consult with State, local, and Indian governments on proposed regulations and will seek to minimize the costs imposed on them by unfunded mandates;
- in promulgating a regulation either the least burdensome option will be chosen or an explanation of why it was not chosen will be given;
- the CBO, at the request of a Chairman or ranking Member, will prepare an estimate of the costs of a regulation to implement a mandate covered by this Act and will compare it to the estimate it made when the mandate was first proposed (see vote No. 45 for related debate);

• agencies will prepare statements on any proposed regulation that will impose a Federal intergovernmental mandate that will cost in excess of \$100 million in any 1 year or that will impose a private sector mandate that will cost in excess of \$100 million in any 1 year; those reports will include qualitative and quantitative cost/benefit analyses to the extent practicable; and

• the Advisory Commission on Intergovernmental Relations will conduct a study of the total costs and benefits incurred by State, local and tribal governments of complying with Federal laws and regulations and will make recommendations (see vote No. 18).

Miscellaneous:

- to the extent practicable, the Presiding Officer will consult with the Governmental Affairs Committee when questions are raised as to the existence of mandates in legislation, and Budget Committee estimates will be used in determining the cost of mandates (see vote No. 22);
- it is the sense of the Senate that State governments should not shift costs to local governments (see vote No. 24);
- for purposes of this Act, reductions in Federal border control efforts and reductions in reimbursements to States for illegal immigration costs will be considered intergovernmental mandates (see vote No. 56);
- the definition of "agency" in this bill will exclude independent agencies; and
- judicial review of this Act will be limited to certain agency actions.

Those favoring passage contended:

The Constitution, and specifically the 10th Amendment, guarantee that certain functions will be performed by certain levels of government, thus ensuring direct accountability of elected officials to the voters. Our Constitution guarantees a Federal, State, and local partnership. For the past several decades, though, Members of Congress have behaved as though they represent the Federal Government of America instead of the United States of America. They have studiously ignored the 10th amendment, imposing one new unfunded burden after another on the States. They have reaped the credit for all the benefits they have mandated, while State and local governments have endured voter wrath because they have had to raise taxes to pay for those benefits.

They have also unthinkingly piled reams of regulations on businesses and private individuals. The costs of those regulations to businesses dampens economic growth and leads to lower standards of living. Costs to individuals include the loss of their private property rights through takings--in some cases, the restrictions on the use of their own property are so severe that the only use they can make of it is to pay the real estate taxes due.

The excesses of past Congresses have made this bill both possible and necessary. The burdens on State and local governments and on the private sector have become so extreme that no credit comes back to Congress anymore for imposing more mandates. The American people have caught on to the game, and want to see Congress exercise restraint. This bill will provide that restraint by adhering to two simple principles: The Federal Government should know and pay for the costs of mandates before imposing them on State and local governments; and the Federal Government should know the costs and impacts of mandates before imposing them on the private sector. The heart and soul of S. 1 is accountability; anytime that Congress wants to violate either of these principles both the Senate and the House will have to go on record by rollcall votes as favoring that violation.

The conference report has two substantive changes from the Senate-passed bill. First, it will allow for some judicial review of agency actions in implementing this Act. This provision was added due to House Members' concern in conference that without the possibility of judicial review some agency bureaucrats would ignore their responsibilities under S. 1. As evidence they pointed to the flagrant disregard that has been shown by bureaucrats to their duties under the Regulatory Flexibility Act, which does not allow for judicial review. The House conferees' point was well taken, but at the same time Senate conferees were concerned about judicial overreaching. After extensive negotiations, this compromise allowing for limited judicial review of was reached. The other change to this conference report is one which we were more than happy to accede to--instead of setting a threshold of \$200 million for preparing CBO cost estimates of mandates on the private sector, a \$100 million threshold will be set.

S. 1 reflects the philosophy that local issues can best be decided by local officials and their citizens. It is a long-overdue return

to federalism which we are proud to support.

Those opposing passage contended:

Last year we supported legislation that would have addressed the problem of unfunded mandates in an appropriate and effective manner. That bill, S. 993, would have required Congress to think carefully and critically about the mandates it was about to impose upon State and local governments. It would have had to acknowledge the magnitude of the burden before it passed legislation. S. 993 would have remedied the problem of the Federal Government imposing mandates without thorough consideration of their costs.

S. 1 and this conference report, though, go well beyond S. 993. The high hurdles that will be placed against imposing unfunded mandates will result in endless procedural delays. Additionally, they reflect an unjustified presumption that the Federal Government should not impose requirements on the States unless it pays for them. Not only will S. 1 make Congress consider the costs of unfunded mandates, it will also make it nearly impossible to impose them.

We strenuously oppose the presumption that unfunded mandates should not be imposed. When States fail to pass laws protecting the environment, when they fail to enact gun-control laws, or when they fail to provide sufficient welfare benefits, the Federal Government has the duty and the obligation to order them to spend their own money to shape up. Unfunded mandates, in many instances, are fully warranted. Without the Federal Government imposing such mandates, Americans cannot count on receiving the services and benefits they deserve. We therefore oppose this conference report.